IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3462 OF 2007

Shri Avdut Vasudeo Agashe ...Petitioner

Versus

Shri Anil Vasudeo Agashe & Ors. ...Respondents

Shri S.M.Kelkar for the Petitioner.

CORAM : ABHAY S.OKA, J.
DATED : JULY 04, 2007.

P.C.:

1. Heard Advocate for the Petitioner. This Petition under Article 227 of the Constitution of India arises out of an application made by the first Respondent under section 50 of the Mental Health Act, 1987. Prayer made by the first Respondent in the said Application is for holding an inquiry about mental health of one Smt Sindhutai Agashe. The Petitioner, the first Respondent and second Respondent are the sons of the said Smt Sindhutai. The District Court referred the said Smt Sindhutai for medical examination to the Department of Psychiatry of B.J.Medical College and Sasoon Hospital, Pune. The said report is at Exhibit 35.

2. The Petitioner made an Application at Exhibit 36 contending that the report at Exhibit 35 is incomplete. In the said Application the Petitioner has contended that further examination of his mother on various

aspects indicated in the said Application is necessary. Therefore, the prayer made in the said Application at Exhibit 36 is for issuing a direction to re-examine the mother. By the order dated 28th March, 2007 passed by the learned District Judge I, Pune the said Application has been rejected. This is the order impugned in this Writ Petition under Article 227 of the Constitution of India.

3. The submission of the learned Advocate for the petitioner is that on plain reading of the report at Exhibit 35 the same appears to be incomplete. He pointed out that the Petitioner himself is a medical practitioner and he has set out in the application at Exhibit 36 on what aspects re-examination is required. He submitted that the report indicates that the said Smt Sindhutai was not examined by a qualified medical practitioner.

4. I have considered the submissions. On receipt of the report, the learned Judge is required to record his findings on following two aspects:

(i) Whether the alleged mentally ill person is infact mentally ill or not and

(ii) Where such person is mentally ill, whether he is

capable of taking care of himself and managing his property, or is incapable of managing his property.

5. In paragraph No.9 of the impugned order, the learned Judge has observed as under:

> "So as to ascetain as to whether the alleged mentally ill person is in fact mentally ill or not we have to consider Psychiatric Report. As stated earlier my predecessor has referred Smt.Sindhutai V. Agashe to Sassoon General Hospitals, Pune and she appears to have been examined by the concerned doctor in presence of the parties to the proceeding and then submitted Psychiatric Assessment Report (Exh.35). Without examination of the concerned doctor, it would not be proper to express any view about his opinion. If any finding is given at this stage in respect of opinion given by the concerned doctor in his Psychiatric Assessment Report (Exh.35) then it would amount to prejuding the matter. Therefore, I think that it is not at all desirable to refer Smt. Sindhutai V. Agashe again for her re-examination at this stage".

6. The learned Judge has therefore recorded that at

this stage it is not desirable to refer the said Smt Sindhutai for re-examination. He has observed that without examination of the concerned doctor who has submitted the report at Exhibit 35, it will not be proper to decide whether re-examination of the patient is required to be ordered.

7. The lecturer in the Department of Psychiatry who has submitted the report at Exhibit 35 is bound to be examined on oath before the learned trial Judge. After examination of the said lecturer, the learned trial Judge can always consider the issues raised by the Petitioner in the application at Exhibit 36 and if the learned Judge is satisfied that re-examination or further examination of the said Smt Sindhutai is required, it is obvious that the learned Judge is bound to pass necessary directions in that behalf.

8. In this view of the matter, it is not possible to interfere with the impugned order in this Petition under Article 227 of the Constitution of India. Subject to what is stated above, Writ Petition is rejected.

JUDGE